

ADM File No. 2010-13

9/23/2011

As an attorney who has been practicing in the area of criminal law since 1978, I am writing to urge the Court not to adopt any amendment to MCR 6.001 that will eliminate the defendant's right to discovery prior to preliminary examination.

In my view, obtaining discovery prior to the exam is an essential component of rendering effective assistance of counsel, both at the exam stage and beyond. It is often not even possible for defense counsel to conduct an initial comprehensive interview of one's own client without having discovery and knowing the specifics of the charges against the defendant.

Allowing discovery prior to exam also promotes a more efficient use of the court's resources. It allows defense counsel to discuss with his/her client the option of waiving the exam. I believe it would be ineffective assistance of counsel for any attorney, who has not yet reviewed the discovery materials, to advise the defendant to waive the exam. Knowing the basis of the prosecution's claims against the defendant also enables defense counsel to better prepare for the exam and facilitates a more focused and concise exam proceeding; and having the transcript of the exam, when it is held, is invaluable with respect to subsequent plea negotiations and pretrial motions and, of course, trial.

In my view, eliminating discovery prior to preliminary examination will result in more congested trial court dockets, poorer-quality representation and more appeals.

Thank you for your consideration of this comment.

Eileen R. Scheff P27914
645 Griswold, Suite 1817
Detroit, MI 48226
(313) 963-1921